

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
PACIFIC SAND & GRAVEL COMPANY,)
Appellant,)
v.)
SOUTHWEST AIR POLLUTION)
CONTROL AUTHORITY,)
Respondent.)

PCHB No. 77-66

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER, the appeal of a \$250 civil penalty for air
contaminant emissions allegedly in violation of WAC 173-400-040
having come on regularly for informal hearing on the 21st day of
November, 1977 in Longview, Washington, and appellant Pacific Sand
& Gravel Company appearing through its Production Manager, Harold Nickel,
and respondent Southwest Air Pollution Control Authority appearing
through its attorney James D. Ladley with William A Harrison, hearing
examiner presiding, and the Board having considered the exhibits,
records and files herein and having reviewed the Proposed Decision of

1 the presiding officer mailed to the parties on the 5th day of
2 December, 1977, and more than twenty days having elapsed from said
3 service, and

4 The Board having received no exceptions to said Proposed Decision
5 and the Board being fully advised in the premises; now therefore,

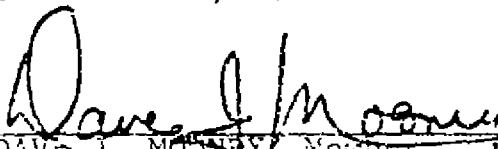
6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said Proposed
7 Decision containing Findings of Fact, Conclusions of Law and Order
8 dated the 5th day of December 1977, and incorporated by reference
9 herein and attached hereto as Exhibit A, are adopted and hereby
10 entered as the Board's Final Findings of Fact, Conclusions of Law
11 and Order herein

12 DATED this 5th day of January, 1978.

13 POLLUTION CONTROL HEARINGS BOARD

14 
15 W. A. GISSBERG, Chairman

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17 CHRIS SMITH, Member

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19 DAVE J. MOONEY, Member
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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER

1 CERTIFICATION OF MAILING

2 I, LaRene Barlin, certify that I mailed, postage prepaid, copies
3 of the foregoing document on the 5th day of
4 January, 1978, to each of the following-named parties, at the
5 last known post office addresses, with the proper postage affixed
6 to the respective envelopes

7 Mr. James D. Ladley
8 Attorney at Law
9 P. O. Box 938
 Vancouver, Washington 98660

10 Mr. Harold Nickel
11 Production Manager
 Lakeside Industries
12 P. O. Box 1379
 Bellevue, Washington 98009

13 Pacific Sand & Gravel Company
14 P. O. Box 699
 Centralia, Washington 98531

15 Southwest Air Pollution Control Authority
16 7601 N.E. Hazel Dell Avenue
 Vancouver, Washington 98665

17
18 *LaRene Barlin*
19 _____
 LARENE BARLIN
 POLLUTION CONTROL HEARINGS BOARD

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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
 AND ORDER

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FINDINGS OF FACT,
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This matter, the appeal of a \$250 civil penalty for air
contaminant emissions allegedly in violation of WAC 173-400-040
came on for hearing before the Pollution Control Hearings Board
convened at Longview, Washington on November 21, 1977. Hearing
examiner William A. Harrison presided alone. There being no
election of formal hearing the hearing was informal pursuant to
WAC 371-08-155.

Appellant appeared by and through its Production Manager,
Harold Nickel. Respondent appeared by and through its attorney,

EXHIBIT A

1 Jares D. Ladley. Olympia court reporter Christy Check recorded
2 the proceedings.

3 Witnesses were sworn and testified. Exhibits were examined.
4 From testimony heard and exhibits examined, the Pollution Control
5 Hearings Board makes these

6 FINDINGS OF FACT

7 I

8 Respondent, pursuant to RCW 43.21B.260, has filed with this
9 Hearings Board a certified copy of its Regulation 1 containing
10 respondent's regulations and amendments thereto. Official notice
11 thereof is taken.

12 II

13 Appellant owns and operates a hot-mix asphalt plant at
14 Centralia, Washington. In this plant, gravel is dried and mixed
15 with a petroleum product to form asphalt. The principal air
16 pollution control device is a venturi scrubber which appellant
17 installed, several years prior to this appeal, to control the
18 emissions of dust and asphalt fumes which would otherwise result
19 from the hot-mix process. When the hot-mix plant and scrubber are
20 operating properly, there are only minimal visible emissions

21 III

22 On April 22, 1977, the following sequence of events took place:

23 A. At shortly past 1:00 p.m. From the stack of appellant's
24 asphalt plant there arose a large, eye-catching, visible emission.
25 The emission wafted out over the nearby freeway, Interstate 5,
26 and into the view of respondent's inspectors who were in their

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

car traveling south on the freeway. The emission was such as to cause the inspectors to bring their car to an immediate halt by the side of the freeway. Since only minimal visible emissions result when appellant's mix plant and scrubber are operating properly, this large, eye-catching emission was constructive notice to appellant of an upset or breakdown. At this point, appellant made no attempt to notify the respondent that an excessive emission had resulted from breakdown.

B. At 1:31 p.m. Appellant continued to operate its mix plant and caused emissions aggregating at least ten minutes, in one hour, of an opacity ranging from 25 to 60 percent. These emissions were recorded by respondent's inspectors (See Exhibit R-3). Appellant's employee in charge of the mix plant also observed the excessive emissions, and determined that they were caused by breakdown of the water pump which supplies water to the venturi scrubber. Although he had no telephone available to him, this employee reported the breakdown and excessive emissions to appellant's front office, via private two-way radio, at 1:32 p.m. He further reported that he was shutting down the mix plant, which he did. Four employees of appellant overheard the radio report of breakdown and excessive emissions when it came into the front office. Despite the presence of a telephone in appellant's front office, none of them attempted to notify the respondent.

C. At approximately 2:00 p.m. Respondent's inspector arrived at appellant's front office and declared that a violation had occurred. Only at this point did appellant notify respondent's inspector

1 that there had been a breakdown of equipment, causing the emissions
2 in question. A Notice and Order of Civil Penalty in the amount of
3 \$250 was subsequently issued to appellant. From this penalty,
4 appellant appeals.

5 IV

6 Any Conclusion of Law hereinafter stated which is deemed to
7 be a Finding of Fact is hereby adopted as such.

8 From these Findings the Pollution Control Hearings Board
9 comes to these

10 CONCLUSIONS OF LAW

11 I

12 In emitting an air contaminant, dust and asphalt fumes, for
13 more than three minutes in any one hour, which contaminant exceeds
14 20% opacity, appellant violated WAC 173-400-040. This state-wide
15 regulation is more stringent, in pertinent provisions, than is the
16 regional regulation, respondent's Section 4.02 of Regulation I.
17 The latter is therefore unenforceable. RCW 70.94.331(2)(b).

18 II

19 Appellant seeks to invoke the exculpatory language of
20 Section 4.07 of respondent's Regulation I which states as
21 follows¹:

22
23 1. Section 4.07 is a valid and applicable regulation because
24 it is a regional regulation which is more stringent, in pertinent
25 part, than the comparable state regulation, WAC 173-400-120.
RCW 70.94.331(2)(b).

26 FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER

1 Report of Breakdown:

2 Emissions exceeding the limits set
3 by this regulation as a direct result
4 of unavoidable upset conditions or
5 unavoidable and unforeseeable breakdown
6 of equipment or control apparatus shall
7 not be deemed in violation provided that:

8 (1) The upset or breakdown is reported
9 to the Authority as soon as possible.

10 (2) The person responsible shall upon
11 the request of the Control Officer make a
12 full report outlining the known causes
13 and the preventive measures to be taken
14 to minimize or prevent a reoccurrence.

15 Appellant did not notify respondent of the breakdown or
16 emission in question until respondent's inspector appeared and
17 notified appellant. The rapid arrival of respondent's inspector
18 may not deprive an appellant of Section 4.07 if there has been a
19 bona fide, good faith attempt on the part of appellant to notify
20 respondent prior to and independent of the inspector's appearance.
21 M/S HALO v. PSAPCA, PCHB No. 77-99 (1977). Here, however, approximately
22 one-half hour elapsed from the time that appellant knew to a
23 certainty that a breakdown had occurred and the time that
24 respondent's inspector arrived. Despite the availability of a
25 telephone and ample personnel to accomplish this simple notification,
26 the appellant made no attempt to notify the respondent prior to the
27 inspector's arrival. Under these circumstances, the provisions of
28 Section 4.07 are not available to exculpate the appellant.

29 IV

30 Any Finding of Fact which is deemed to be a Conclusion of
31 Law is hereby adopted as such.

32 FINDINGS OF FACT,
33 CONCLUSIONS OF LAW AND ORDER

1 From these Conclusions the Board comes to this

2 ORDER

3 The \$250 civil penalty appealed from is hereby affirmed.

4 DONE at Lacey, Washington this 5th day of December, 1977.

5 POLLUTION CONTROL HEARINGS BOARD

6 *William A. Harrison*

7 WILLIAM A. HARRISON
8 Presiding Officer

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